

**MINUTES OF THE SEPTEMBER 2007 MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE**

Date of meeting: The regular, statutory meeting of the Administrative Rules Review Committee (ARRC) was held Tuesday, September 11, 2007, in Room 22, State Capitol, Des Moines, Iowa.

Members present: Senator Michael Connolly, Chair, and Representative Philip Wise, Vice Chair; Senators Jeff Angelo, Thomas Courtney, John P. Kibbie, and James Seymour; Representatives Marcella Frevert, David Heaton, and Linda Upmeyer. Rep. David Jacoby was excused.

Also present: Joseph A. Royce, Legal Counsel; Kathleen K. West, Administrative Code Editor; James Larew, Administrative Rules Coordinator, and Deborah Svec-Carstens, associate counsel; fiscal staff, caucus staff and other interested parties.

Convened Sen. Connolly convened the meeting at 9:12 a.m.

LSA report Glen Dickinson reported on LSA's plans regarding electronic distribution of the Iowa Administrative Bulletin and Iowa Administrative Code. Mr. Dickinson offered to demonstrate the Web options when they become operational.

Fiscal report Sue Lerdal presented the LSA fiscal report on rule makings that may have a significant fiscal impact. Rep. Upmeyer requested additional information about the Magellan contract.

REVENUE DEPARTMENT David Casey, Dale Hyman, and Jim McNulty represented the department.

ARC 6211B No questions on proposed amendments to chs 40, 42, 43, and 52 concerning the educational savings plan; exclusions for victim compensation payments and the Vietnam Conflict bonus; research activities credit; and checkoffs.

ARC 6167B No questions on proposed amendments to individual, corporation, and franchise income tax relating to the film qualified expenditure tax credit and film investment tax credit. Mr. Casey explained that the department of economic development administers the program and approves the tax credits.

ARC 6209B No questions on proposed amendments regarding payment of motor fuel tax and filing of reports.

Special review Mr. Hyman reviewed the productivity formula used to calculate the property tax on agricultural land and buildings. Discussion related to the need for uniformity of assessments and equitable treatment of both family farmers and livestock confinement operations.

Motion to refer Sen. Kibbie moved a referral of rule 71.3 to the ways and means committee of the general assembly.

Motion carried The motion to refer rule 71.3 carried.

NATURAL RESOURCE COMMISSION Jon Tack, Steve Dermand, Willie Suchy, and Marion Conover represented the commission.

ARC 6200B No questions on proposed amendments regarding project selection criteria for REAP grants.

ARC 6201B No questions on the proposed designation of public swimming areas at Clear Lake.

ARC 6199B Amendments to ch 82 pertain to commercial fishing on the Mississippi River. Mr. Conover commented that the commission has responded to concerns raised, and all issues have been resolved.

ARC 6197B No questions on waterfowl and coot hunting seasons and bag limits.

ARC 6198B No questions on ch 116, the help us stop hunger (HUSH) deer donation program.

ENVIRONMENTAL PROTECTION COMMISSION Jim McGraw, Patti Cale-Finnegan, and Richard Leopold represented the commission. Terry Johnson represented Waste Management.

ARC 6186B No action on proposed amendments to ch 22 intended to control air pollution from grain elevators. Mr. McGraw identified the four groups of grain elevators; outlined the requirements for each group; and reported on public hearings, meetings with agribusiness associations, and workshops being held statewide.

ARC 6187B No action on amendments to ch 93, nonpoint source pollution control set-aside program.

ARC 5999B This rule making concerning sanitary landfills for municipal solid waste and groundwater protection systems for the disposal of nonhazardous wastes has been held over from the July meeting. Mr. Leopold reported on reaching agreement with landfills that alternative technology may be accepted on a site-by-site basis if the landfill can demonstrate that the design is as protective of the groundwater. Mr. Johnson commented that Waste Management has submitted an alternative design model and is awaiting a response from the department. Rep. Wise distributed copies of a response from the EPA to his letter sent August 20, 2007. Mr. Larew directed questions to Mr. Leopold to establish that Iowa's current standards are not as

stringent as those in contiguous states, that out-of-state waste is being brought into Iowa landfills, that the groundwater in Iowa is threatened, and that the new rules align with standards imposed in contiguous states. Rep. Heaton wondered if a soil expert from Iowa State could provide useful information to the committee in regard to permeability of compacted clay. Mr. Tack stated that the department has prepared drawings for this ARRC meeting to illustrate the issues that are under discussion.

Motion to delay Sen. Kibbie made a motion to delay the rules for 70 days.
 Motion carried. A roll call vote was requested. All nine members present voted in favor of the 70-day delay. Sen. Connolly expressed the hope that efforts to resolve differences continue during the time that the rules are under delay. Sen. Angelo commented that an additional issue that needs to be resolved concerns whether facilities approved under the existing rules will be considered noncompliant under the new rules.

RACING AND GAMING COMMISSION Jack Ketterer represented the commission. Rep. Rick Olson was also present.

Special review In regard to the issue of summary suspension of a license, Mr. Ketterer reported that a definition of “immediate danger” was presented to the commission, but the commission took no action to adopt the definition. Mr. Olson commented that he intends to introduce legislation to address this issue.

Motion to refer Sen. Connolly moved a referral to the general assembly.
 Motion carried The motion to refer carried.

EDUCATION DEPARTMENT Carol Greta and Jan Friedel represented the department.

ARC 6161B No action on proposed amendments to ch 12 concerning prohibition of discrimination based on sexual orientation and gender identity, the definition of “prekindergarten program,” and requirements for antibullying and antiharassment policy. Rep. Wise commended the work of the department. Rep. Upmeyer suggested that the statutory language “including but not limited to” be added to the rules.

ARC 6156B Ms. Greta reported that these proposed amendments to ch 12 regarding core content areas will be terminated and another rule making will be forthcoming. There were no questions.

ARC 6163B No questions on a corrective amendment to ch 17, open enrollment.
 ARC 6154B No action on the proposed allocation plan for supplementation of community college faculty salaries. Ms. Friedel advised Rep. Heaton that the department will provide an audit template by which community colleges are to report to the department.

ARC 6155B No questions on proposed 21.75, regarding the fee for used motor vehicle dealer education programs.

ARC 6162B No questions on amendments to ch 56 concerning vocational rehabilitation services.
 Special review A review of application procedures for statewide voluntary preschool program grants was requested by Rep. Wise. Ms. Greta explained that instructions for competitive grants are very specific; if an applicant does not adhere to the instructions, the application is not read. Ms. Greta agreed to provide Rep. Upmeyer information about how many students are being served by the program. Rep. Frevert expressed concern about the legislation, which gives preference to areas that have high poverty and no existing program.

INSURANCE DIVISION Susan Voss and Rosanne Mead represented the department. Bob Skow represented the Independent Insurance Agents of Iowa.

ARC 6205B Subrule 39.15(4) establishes producer training requirements for long-term care insurance. Ms. Mead reported that, as a result of public comments received, some technical changes have been made. This subrule, based on an NAIC model, requires an initial eight hours of training and six continuing education hours for all insurance producers licensed to sell long-term care products. Rep. Frevert expressed a concern that if the training requirements are viewed as too burdensome or too costly, community insurance agents may decide not to sell long-term care products. Sen. Connolly suggested that the division serve as a “gatekeeper” and limit the products that are sold in Iowa; Rep. Heaton concurred. Mr. Skow expressed concerns on behalf of the Independent Insurance Agents of Iowa, who are already are required to pass an examination and take 36 hours of continuing education every three years. Mr. Skow speculated that these requirements may be counter-productive and may result in fewer agents being willing to sell long-term care products. Mr. Skow agreed that standardization of products would benefit consumers and also asserted that most of the complaints regarding long-term care insurance can be attributed to two insurers who use telemarketers.

Motion to delay Rep. Wise moved a 70-day delay on 39.15(4).
 Motion carried The motion carried; Ms. Voss agreed to meet with Mr. Skow and work toward resolution of concerns.

- HUMAN SERVICES DEPARTMENT** Nancy Freudenberg, Eileen Creager, and Jennifer Vermeer represented the department. Jim Aberg represented the Iowa Association of Community Providers. Marty Ryan represented the ACLU.
- ARC 6183B Proposed 75.1(39)“a” pertains to Medicaid coverage for working persons with disabilities. Rep. Heaton was advised that although a spouse’s income is counted in determining eligibility, only the disabled person’s income is considered in setting the premium.
- ARC 6208B Proposed amendments to ch 76 provide for data-sharing agreements so the department can identify third-party insurers and ensure that Medicaid is the payor of last resort. Mr. Ryan noted that the ACLU will submit comments regarding privacy and due process concerns.
- ARC 6191B No questions on amendments to chs 77 to 79 and 81 concerning durable medical equipment, prosthetic devices and medical supplies.
- ARC 6141B No action on an amendment to 78.1(2) concerning Medicaid funding for prescribed drugs and acceptable form of written prescriptions.
- ARC 6192B No action on revised Medicaid reimbursement methodology for community mental health centers.
- ARC 6193B No questions on Medicaid reimbursement methodology for hospital inpatient psychiatric services.
- ARC 6212B No questions on termination of notice regarding county of residence for the state payment program.
- ARC 5813B Ms. Freudenberg provided an update on HCBS habilitation services and indicated that the department realizes that rates will need to be addressed after data is collected for a year and that uniform cost reporting is a priority for providers. Mr. Aberg expressed appreciation to Mr. Gessow, Ms. Vermeer and the DHS staff for working with the association and noted that there is a need to continue work on rates. Mr. Aberg requested a return to the cost reporting process that was used under ARO or, if that is not possible, an increase in the upper limits.
- Special review No action was taken on personal needs allowance.
- Committee business** Sen. Courtney moved approval of the minutes of the August meeting; Sen. Seymour seconded the motion. The motion carried.
The next meeting was scheduled for Tuesday, October 9, 2007.
There was discussion about the increasing number of special reviews and their impact on the agenda.
There was also discussion regarding the need to update the committee’s rules of procedure. Mr. Royce agreed to disseminate the rules to the committee for review at the October or November meeting.
Rep. Heaton requested that Iowa Finance Authority’s 2008 qualified allocation program for low-income housing tax credits be scheduled for review.
- Adjourned The meeting was adjourned at 3:25 p.m.

Respectfully submitted,

Kathleen K. West

APPROVED:

Chair Michael Connolly

Vice Chair Philip Wise